

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Bail Appl..No. 4229 of 2007()

SC.475/2004 of ADDL. DISTRICT& SESSIONS COURT, PATHANAMTHITTA

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PETITIONER/ACCUSED

SIDDIK RAWTHER, AGED 58 YEARS,
S/O NAGOOR RAWTHER, PATHIRUVELIL VEEDU,
SEETHAKKULAM MURI, MALLAPPALLY VILLAGE,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.4229 of 2007

Dated this the 12th day of July 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 302 I.P.C. On the date, when the case was posted for trial, surprisingly the petitioner did not appear before the learned Sessions Judge. The petitioner's counsel did not admittedly file an application for exemption and for permission to proceed with the trial. The learned Sessions Judge, in these circumstances, was left with no alternative but to cancel the bail and issue a non-bailable warrant against the petitioner. The petitioner now finds the warrant of arrest issued by the learned Sessions Judge chasing him. He has come to this court with the prayer that directions under Section 438 Cr.P.C may be issued in his favour.

2. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the

extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reason in this case.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

4. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007